IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.186 of 2005
Date of Decision: 14.09.2006

Baldev Singh and & Ors. ...Petitioners

Vs.

Rajinder Kumar & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.K.K.Bansal, Advocate,
for the petitioners.
Mr.Tribhuwan Singla Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 3.12.2004 passed by the learned Civil Judge (Junior Division), Barnala dismissing the application moved by petitioners Baldev Singh and others for being impleaded as a party to the suit.

The case of the petitioners was that the property in dispute along with other property measuring 16 kanals 17 marlas has been purchased by the petitioners by way of registered sale deed from defendant No.1 Buta Singh son of Kartar Singh. In addition, an amount of Rs.1,05,000/- was paid to defendant No.2 Megh Nath to redeem the mortgage and possession of land measuring 11 Kanal 17 marlas given to them. Thus, they were owners and in possession of the suit property. The

petitioners claimed that they were bona fide purchasers for consideration withiot notice.

On these grounds it was claimed that the petitioners were necessary parties to the suit especially when the defendants had been proceeded ex parte. The said application was contested by the respondents herein on the ground that the property in dispute was attached under Order 38 Rule 5 of the Code of Civil Procedure and further that the defendants in the suit were restrained from alienating the property. Thus, it was claimed that the property was purchased by the applicant-petitioners having full knowledge of the attachment. It was also claimed that the sale deed in favour of the applicant-petitioners was not binding on the plaintiffs. The said application was dismissed by holding that the plaintiff was dominus litus and the applicant-petitioners having purchased the property with knowledge of attachment was not necessary party.

I have heard the learned counsel for the parties and find that once the petitioners were put in possession and therefore, had interest in the property, their claim of bona fide purchase could be considered only after the said partes have led evidence. Thus, it was not open to the Trial Court to reject the application without permitting the parties to prove their case.

Accordingly this revision petition is allowed. The impugned order is set aside and the application moved by the petitioner-applicants under Order 1 Rule 10 of the Code is allowed with no order as to costs.

(Vinod K.Sharma)
14.09.2006 Judge
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